

ESTTA Tracking number: **ESTTA193064**

Filing date: **02/15/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Peter Mignola d/b/a Metrosonic
Granted to Date of previous extension	02/16/2008
Address	143 Roebling Street Third Floor Brooklyn, NY 11211 UNITED STATES
Party who filed Extension of time to oppose	PeterMignola
Relationship to party who filed Extension of time to oppose	The change was made to insert a space between the Opposer's First and Last names and to include the Opposer's trade name.

Attorney information	Nicholas A. Penkovsky, Esq. Law Offices of Nicholas A. Penkovsky, PC 112 Madison Avenue Sixth Floor New York, NY 10016 UNITED STATES nicholas_penkovsky@yahoo.com Phone:(212) 216-9708
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Applicant Information

Application No	77086256	Publication date	12/18/2007
Opposition Filing Date	02/15/2008	Opposition Period Ends	02/16/2008
Applicant	Metrosonics Concepts Limited 1776 Broadway, 21st Floor New York, NY 10019 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 2000/05/00 First Use In Commerce: 2000/05/00
All goods and services in the class are opposed, namely: Entertainment, namely, live music concerts

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Opposer's mark was in use prior to Applicant's. Opposer's mark has been in continuous use and not abandoned by Opposer. Applicant's mark so

	resembles Opposer's mark and trade name that when Applicant's mark is used on or in connection with the goods described by Applicant, Applicant's mark so resembles Opposer's mark as to be likely to cause confusion, or to cause mistake or to deceive the public. Trademark Act section 2(d).
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Related Proceedings	NONE
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Attachments	OPPOSITION.pdf (3 pages)(119225 bytes) OPP-EXH-1.pdf (2 pages)(620268 bytes) OPP-PROOF-OF-SERVICE.pdf (1 page)(55911 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Nicholas A. Penkovsky/
Name	Nicholas A. Penkovsky, Esq.
Date	02/15/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK AND APPEAL BOARD
In the matter of Application Serial No. 77/086256
Filed on January 19, 2007
For the Mark METROSONICS
Published in the *Official Gazette (Trademarks)* on December 18, 2007

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PETER MIGNOLA d/b/a METROSONIC,

Opposer,

Cancellation No.: _____

v.

METROSONICS CONCEPTS LIMITED,

Applicant.

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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

NOTICE OF OPPOSITION

PETER MIGNOLA d/b/a METROSONIC
143 Roebling Street, Third Floor
Brooklyn, NY 11211

The above-identified opposer believes that he will be damaged by registration of the mark shown in the above-identified application and hereby opposes same.

The grounds for opposition are as follows:

1. Opposer does, and has, for many years operated an audio recording studio providing audio recording and audio production services to the public with a particular emphasis on the entertainment and music industries. In connection therewith opposer has used in interstate and international commerce the service mark METROSONIC and related marks prior to

applicant's first use of the service mark METROSONICS.

2. Prior to selecting the service mark METROSONIC for his services in interstate commerce, opposer conducted a thorough search for other uses of, and variations on, the name METROSONIC as a trade name, trademark and service mark. Opposer discovered only one use of said name as a trade name, trademark or service mark for similar services. The person using said name was not that of the applicant herein. Upon contacting said person then using the name, opposer learned that said person no longer intended to use said name as a trade name, trademark or service mark in commerce and was winding up its business. As a result, opposer selected said name and service mark METROSONIC and began the use of the service mark METROSONIC in interstate commerce and prepared a logo of the service mark as shown in the artwork attached hereto as Opposer's Exhibit 1 in accordance with Trademark Rule 2.122(b).

3. Opposer's services bearing said service mark METROSONIC have been extensively and continuously offered to the public through various channels of trade, including advertising in trade papers, newspapers, magazines, flyers and the Internet. Opposer has also extensively advertised his services under said service mark throughout the United States. By reason of such advertising and rendering of services to the public, the public has come to recognize METROSONIC as signifying opposer and his services and opposer has built up extensive good will in connection with the rendering of services under his said service mark.

4. Opposer, having conducted a search for the service mark and trademark prior to his using it as a service mark has reason to believe that applicant's use of the mark did not occur until some time after opposer began using the service mark METROSONIC.

5. Notwithstanding opposer's long prior rights in and to said service mark, applicant,

on information and belief, on January 19, 2007 filed an application for registration of the service mark METROSONICS in International Class 41 for entertainment, namely live music concerts. Said application was given Serial Number 77/086256, and the mark was published for opposition in the *Official Gazette (Trademarks)* on December 18, 2007.

6. The service mark METROSONICS is confusingly similar to opposer's METROSONIC service mark, and its registration and continued use by applicant for its services is likely to cause confusion, deception and mistake. Applicant's use of said METROSONICS mark interferes with opposer's use of his METROSONIC service mark, and continued use or registration of its mark by applicant will seriously damage opposer.

WHEREFORE, opposer believes that he will be damaged by said registration and prays that it be denied.

The filing fee of this Opposition is being paid upon the electronic filing of this Opposition.

DATED: New York, New York
February 14, 2008

LAW OFFICES OF NICHOLAS A. PENKOVSKY, PC

By: 

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Attorneys for Opposer
Peter Mignola d/b/a Metrosonic

OPPOSER'S EXHIBIT 1

METROSONIC

PROOF OF SERVICE BY MAIL

I am a citizen of the United States, employed in the county of New York, State of New York. I am over the age of eighteen (18) and not a party to the within action. Our business address is 112 Madison Avenue, Sixth Floor, New York, NY 10016.

On February 14, 2008, I served the foregoing documents described as: NOTICE OF OPPOSITION on the interested party(ies) at their last known addresses and/or the attorneys for the interested party(ies) in this action at the addresses designated for service by placing a true copy thereof enclosed in sealed envelopes and addressed as follows:

Lawrence E. Abelman, Esq., Abelman Frayne & Schwab, 666 Third Avenue, 10th Floor, New York, NY 10017.

XX **(BY MAIL)** I caused such envelope with first class postage thereon fully pre-paid to be placed in the United States mail at New York, New York.

 (BY MAIL IN THE ORDINARY COURSE OF BUSINESS) I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing with the U.S. Postal Service and the fact that the correspondence would be deposited with the U.S. Postal Service that same day in the ordinary course of business with first class postage thereon fully pre-paid; and on this date the above-referenced correspondence was placed for collection and mailing following the firm's ordinary business practices.

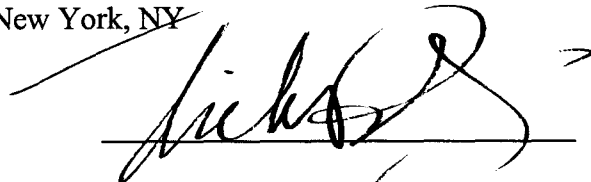
 (BY FACSIMILE) I caused the above-referenced document(s) to be transmitted by facsimile to the persons as listed on the attached SERVICE LIST.

 (BY PERSONAL SERVICE) I caused the such envelope to be served by hand to the offices of the addressee(s).

 (State) I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

 (Federal) I certify under the penalty of perjury that the foregoing is true and correct, and that I am a member of the bar of the Courts of the States of New York and New Jersey and of the United States District Courts for the Southern and Eastern Districts of New York and the District of New Jersey.

Executed on **February 14, 2008**, at New York, NY

A handwritten signature in black ink, appearing to read "Nick Penkovsky", written over a horizontal line.

Nicholas A. Penkovsky